

provides to CLECs seeking engineering information differ from the drawings that NYT's own engineers use. Tr. 728 (White). In so stating, NYT did not represent or show that it omitted or deleted only proprietary information from these straight line drawings. Tr. 719-20, 727-728 (White). Given these admissions, the Commission cannot conclude that NYT is providing nondiscriminatory access to the maps, records, and engineering information that are essential for use of its pathways.

NYT's "reservation of space" in conduits and other pathways not only violates the 1996 Act, but also would be unreasonable and discriminatory under any standard. Preliminarily, NYT's practice of reserving space solely for itself violates Section 271's command that access to NYT pathways be nondiscriminatory. Section 271(c)(2)(B)(iii). Moreover, NYT states that it provides CLECs access to "spare capacity" in pathways, NYT defining capacity as "spare" (and thus available to CLECs without the need for make-ready work) "only after maintenance and growth conditions have been satisfied to meet [NYT's] provider of last resort requirement." White, p. 8. Thus, presumably, NYT is declining to define some capacity as "spare" (i.e., reserving space for its own needs) based on growth conditions, or the future need for space based on anticipated future demand. Yet, when questioned about forecasts for future demand, NYT acknowledged that capacity is increasing on both poles and conduits as older equipment is replaced with new fiber cable that takes up less space. Tr. 723-24 (White). There is no

reason for NYT to reserve space for its future needs when space on poles and in conduits is growing, rather than disappearing. NYT's reservation of space for itself thus artificially and discriminatorily restricts the access of CLECs to NYT pathways.<sup>23</sup>

Finally, NYT's standard licensing agreements also contain a provision that permits NYT to refuse to modify a pole or conduit or to expand the capacity of a private right-of-way for a CLEC. Madden, p. 16; Rowland, p. 3. This provision plainly violates an FCC rule requiring an ILEC such as NYT to expand the capacity of a pathway if a CLEC requests and if such expansion is reasonably possible. See First Report and Order, ¶ 1162-64. This position is in any event unreasonable and discriminatory. NYT has made no attempt to justify its position.

**b. NYT Has Not Documented The Terms On Which It Provides Access to All Pathways.**

The standard licensing agreements for pole attachments, conduits, and private rights-of-way cited by NYT do not provide

---

<sup>23</sup>NYT suggested that certain matters pertaining to poles and other pathways are currently being considered in a proceeding before Administrative Law Judge William J. Bouteiller (In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095, Case 95-C-0341). Tr. 692-693 (White). While NYT is correct that Judge Bouteiller is presiding over that proceeding, nothing in that proceeding addresses, or purports to govern, NYT's efforts to comply with Section 271. The proceeding before Judge Bouteiller is intended to establish minimum New York State standards for access to all pole attachments; Judge Bouteiller has in no way limited NYT's ability to go beyond these minimum standards to promote exchange competition or to qualify for regulatory relief.

access to all pathways owned or controlled by NYT. Madden, pp. 14-15; Rowland, p. 3. NYT has not identified with any specificity the terms and conditions on which Empire City, NYT's wholly-owned subsidiary, offers access to ducts and conduits in the boroughs of Manhattan and the Bronx. Id. NYT must demonstrate that access to Empire City pathways is available to CLECs in a commercially reasonable manner, and at parity with the access available to NYT and its affiliates. Although NYT has referred generally to a "scale of rents" approved by the City of New York in its Section 271 application (White, p. 2), NYT has not stated what the rates are, how they are derived, or why the Commission should deem them just and reasonable. In addition, NYT does not set forth the process by which CLECs will obtain access to Empire City pathways, demonstrate why the terms and conditions of such access are nondiscriminatory, or show why the access offered to CLECs is at parity with that offered to NYT and its affiliates -- showings that NYT at least claimed to make with respect to other pathways controlled by it. Id., pp. 2-9.

**c. NYT Has Not Established Processes That Will  
Afford CLECs Commercially Reasonable And  
Non-Discriminatory Access To Pathways.**

NYT asserts that it has met the requirement to provide commercially reasonable and non-discriminatory access by virtue of the "process steps that apply generally to the requests by telecommunications carriers for access to [NYT's pole, ducts,

conduits, and rights-of-way]." White, p. 3.<sup>24</sup> In fact, NYT has not established a reliable process for CLECs to obtain access to all pathways controlled by NYT. Madden, pp. 17-25; Rowland, pp. 3-9. Instead, NYT has created a multi-stage "process" for obtaining a license to use NYT pathways, but has not identified the time intervals in which specific stages will be completed, despite the fact that NYT standard agreements impose tight time frames for responses by CLECs to NYT requests or notices. Id.

NYT's "process" for CLECs to place facilities within pathways is not commercially reasonable: among other things, NYT provides no time intervals for provision, correction, or supplementation of maps and engineering information necessary for route planning, and defines no process to ensure the appearance of NYT personnel required to be present for placement of CLEC facilities. Id. In addition, delays by NYT in providing access to correct engineering information have impeded AT&T's efforts to expand its local exchange facilities. Rowland, pp. 4-9.

NYT has also been unwilling to establish reasonable time frames for completion of specific stages of its CLEC "process." Instead, NYT is willing to commit only to a six-month time interval for the process as a whole. Tr. 715-16, 721-22

---

<sup>24</sup>Although NYT claims that this process satisfies the requirements of Section 271(c)(2)(B), NYT specifically states that this process "does not apply to ducts and conduits owned by NYNEX New York's wholly-owned subsidiary Empire City Subway Company." White, p. 2.

(White).<sup>25</sup> NYT's refusal to "measure the sub-elements" of its process is discriminatory for at least two reasons. First, NYT is unwilling and unable to demonstrate parity or commercial reasonableness with respect to each sub-element of access because it refuses to measure or gauge its performance at that level. This failure is significant for CLECs; often, CLECs will not need to enlist NYT for all steps in the process, but will request NYT to perform only certain functions (e.g., providing maps or performing make-ready work). Without standards to assess performance of these tasks, however, a CLEC and the Commission will never be able to determine whether the CLEC has received commercially reasonable access or access at parity with NYT.<sup>26</sup>

Second, NYT has no choice but to measure certain "sub-elements" of its process. The FCC has required that all ILECs provide a response to a CLEC request for access to a pathway

---

<sup>25</sup>When questioned about time intervals for completion of specific stages in NYT's process, Mr. White stated: "... rather than measuring the sub-elements, the total time from when we receive the request to when they can actually pull their cable in and we physically done [sic] the roping and everything else is six months." Tr. 721-22 (White).

<sup>26</sup>NYT itself acknowledged the importance of CLECs performing certain tasks for themselves. NYT witness John White emphasized that CLECs "can also do their own presurvey and save additional time and get charged less because then we only have to verify the locations where they see there are violations or there is a need for make-ready work . . . they can eliminate a lot[] of the process up front." Tr. 717 (White). However, CLECs cannot eliminate a lot of the process "up front" if NYT is not obligated to perform the steps constituting the "back end" within any specified time frame other than six months.

within 45 days.<sup>27</sup> This sub-element of the process must be accounted for and measured. NYT's unwillingness to "measure the sub-elements" means that it has no evidence that it can reliably meet this requirement, especially at the volumes that a competitive local exchange market would demand.

Most significant, the record does not demonstrate that NYT even "measures" the sum of the elements. NYT offered no support for the proposition that it can reliably meet the six-month time frame on a commercially consistent basis and at commercially reasonable volumes. Tr. 692-96, 712-34. This omission does not appear to result from a lack of information; NYT has proudly proclaimed that "there are 725,000 cable TV attachments on our 1.1 million poles that are in the state." Tr. 714 (White). Notwithstanding the number of pole attachments, NYT apparently either has not maintained, or, at a minimum has not provided, information on the provisioning intervals for those pole attachments. Without such information, or other information on provisioning intervals, NYT cannot demonstrate that its six-month time frame for the process as a whole is commercially reasonable, or at parity with what is available to NYT or its affiliates. In this proceeding, NYT has offered no such documentation or other data supporting its six-month interval or showing the time frames in which it typically completes the process as a whole for itself. In the end, NYT has not only

---

<sup>27</sup> See First Report and Order, ¶ 1224.

failed to establish reasonable timeframes for completion of specific stages of its "process," but cannot demonstrate that the stages will be completed (either individually or collectively) in commercially reasonable time frames, or at parity with the interval for completion of the same stages for NYT and its affiliates.

**d. NYT Has Not Demonstrated That It Makes Pathways Available At Just and Reasonable Rates.**

NYT has not attempted to show that the rates for the pathways it controls are just and reasonable. The record, in fact, shows the opposite to be true. NYT reserves the right to determine the "fees" to be paid by CLECs for various administrative tasks, including fees for creating maps and records and for conducting surveys, without a showing that these fees are reasonable. Madden, pp. 29-30; Rowland, p. 3. NYT's rates for certain make-ready work are facially unreasonable, permitting fees of cost plus 35%. Madden, p. 30; Rowland, p. 3. NYT's license fees for private rights-of-way are also unreasonably high and would result in over-recovery by NYT. Madden, pp. 31-32; Rowland, p. 3. NYT cannot show that its rates for pathways are just and reasonable because NYT has provided no cost data for its rates, including whether NYT accounts for the New York City franchise tax exemption that NYT has claimed.

Madden, pp. 31-32; Rowland, p. 3.<sup>28</sup> On this record, NYT cannot show that its rates are just, reasonable and nondiscriminatory.

**CHECKLIST ITEM IV: UNBUNDLED LOCAL LOOPS**

NYT does not provide unbundled loops on commercially reasonable terms or at parity with itself because: (1) NYT's provisioning processes cannot handle the large volumes of orders that a mass market CLEC would need; (2) NYT does not maintain the data necessary to demonstrate parity with its own operations; (3) NYT does not reliably coordinate the cutover of the loop with interim number portability; and (4) NYT does not provide timely information concerning the location of the demarcation point for the installation of new loops.

**a. NYT's Proposed Method Of Provisioning Loops Cannot Accommodate Large Scale CLECs.**

NYT cannot provision unbundled loops within the intervals required to support mass market competition. NYT's method of provisioning unbundled loops requires NYT technicians to manually move loops from NYT's switch to the CLEC's collocated equipment. Tr. 248-50, 252, 285 (Butler) ("[w]e are throwing

---

<sup>28</sup>The information that NYT did provide on the basis for its rates can only be described as meager. NYT stated that rates for its poles are tariffed and that rates for its conduit are not tariffed but filed. Tr. 693 (White). NYT stated that it charges \$7.50 for certain pole surveys, but did not explain the basis for the charge. Tr. 716 (White). NYT did not address any other rates for licenses for make ready, or for administrative tasks. Moreover, NYT provided no evidence on the rates and charges paid by NYT and its affiliates for the same pathways.



into the process a lot of manual coordination"); see also Halloran, p. 17. As NYT admits, however, there is a physical limitation to the number of unbundled loops NYT can provision each day using manual processes. Tr. 299 (Butler).

Only a few NYT technicians can physically stand in front of a switch's main distribution frame at one time to perform the necessary rewiring work and provisioning unbundled loops. Tr. 303 (Butler) ("I believe around 8 or 10 would be a reasonable number").<sup>29</sup> Moreover, NYT recently filed a study with the Commission asserting that each hot cut takes 38 minutes of work time to perform. Halloran, p. 17; Curran, p. 17. Therefore, even if one accepts NYT's doubtful assumption that 10 technicians could provision loops simultaneously, NYT could provision only about 200 loops per day per central office.<sup>30</sup> See Halloran, pp. 17-18; Curran, pp. 17-18. Mass market CLECs are likely to generate far more than 200 orders for unbundled loops per day. Curran, pp. 14-15. The inability of NYT to provision loops at the necessary speeds will inevitably deter CLECs from deploying their own switches.

---

<sup>29</sup>As NYT made clear, NYT does not have technicians dedicated to performing only hot cuts for CLECs. Tr. 248 (Butler) ("We have technicians that's what they do for a living is inside work. They're not just going to do work for, you know, hot cut work for CLECs. They're also going to do any retail work that we would have").

<sup>30</sup>Notably, NYT admits that "the high water mark for SVGAL service order requests in a single day was 150." NYT Interrogatory Responses, Response to Staff-NYT-2.6 (April 1, 1997).

Other CLECs echoed these concerns, and indeed, expressed the fear that increased demand from new CLECs will make it impossible for NYT to maintain even the current level of service it now provides. See Tr. 267-68 (Wehnes) ("That would be my greatest fear . . . that as more CLECs come on line, and more of the systems are in use, that that level of performance will deteriorate"). An additional problem is that NYT treats any order of more than nine loops as a special order that is subject to a negotiated provisioning local. Mass market CLECs will clearly have substantially more than nine loop conversions at a time but NYT appears to regard more than nine loops as a significant number of cutovers. Tr. 312-13 (Butler) ("when we have ten or more lines, we would want to negotiate that interval because we would consider that a large job"); Tr. 311 (Dowell) ("the reason is to allow us the times to do the prep work, to lay in cross-connection and dead-end them early, and move the appropriate forces into that central office in order to complete the work"). Once competition arrives in the local exchange, however, the number of cutovers per day will increase exponentially. Curran, pp. 14-15. NYT has not shown that it can provision loops to CLECs in commercially reasonable intervals.

**b. NYT Does Not Provision Loops In Commercially Reasonable Intervals Generally.**

In addition to its inability to provision loops within reasonable intervals, NYT's stated intervals for loop provisioning are unreasonably long, and it frequently fails to meet even those deadlines. Moreover, NYT is still in the process of establishing metrics to determine whether it complies with its obligations.

For example, NYT states that it has an agreement with one CLEC to perform hot cuts within 5 business days, Tr. 242 (Butler), and the SGAT provides that the provisioning interval for hot cuts will be "in most cases" less than 5 business days. SGAT § 5.5.3 n\*; see also Butler, ¶ 44. However, MFS, the CLEC that has purchased 99 percent of NYT's unbundled loops, reported that NYT had frequently missed these due dates. Tr. 264 (Ball); see also letter from R. Cohn to Judge Stein, dated April 14, 1997, Attachment (showing missed due dates). Indeed, even NYT's witnesses acknowledged these problems. Tr. 255 (Garzillo) ("in '96 we did have some problems but we put a lot of effort to improving our performance").

Similarly, NYT promises to perform hot cuts within a two-hour window with loss of service for no more than 5 minutes. Tr. 250 (Butler). NYT does not maintain any data, however, concerning whether NYT actually meets these intervals. Tr. 251, 296 (Butler).

With respect to the provisioning intervals for hot cuts themselves, NYT does not propose any measurement of parity at all. Rather, NYT claims that there is no service which it provides to itself that is comparable to a hot cut, and therefore parity can be measured only "from the perspective of how we provision the service instead of whether or not we provision -- whether or not we're provisioning an exact same amount of time." Tr. 256-57 (Butler). Thus, NYT claims that the mere fact that loop provisioning is scheduled according to the "SMARTS clock" means that NYT is providing loops at parity with itself. Tr. 257-58 (Butler). Other parties, however, noted that NYT does comparable inside cross-wire work for itself, Tr. 269 (Wehnes), but NYT does not maintain any records on the intervals in which it provides such services to itself. In sum, NYT has yet to establish appropriate metrics to track its performance in this regard.

In addition, NYT has developed almost no metrics to measure either performance for itself or performance for CLECs in the provisioning of new local loops. Tr. 258-59 (Coffey) ("[m]any of these measurements are under development"). NYT listed several measurements that NYT is still developing: percentage of orders completed within five business days, Tr. 259 (Coffey) ("this is not an easy thing to do, quite honestly, so it's something that we are working towards"); trouble reports within 30 days of installation; missed repair appointments; subsequent trouble reports; percentage of lines out of service

for more than 24 hours. See Tr. 259-60 (Coffey). NYT does not even propose to complete the development of these measurements for an additional three months. Tr. 260 (Coffey).

**c. NYT Does Not Reliably Coordinate The Cutover Of Loops With Interim Number Portability.**

The record also shows that NYT does not coordinate adequately the cutover of unbundled loops with interim number portability. As MFS testified, in the past NYT often implemented the call forwarding necessary for interim number portability well before the scheduled cutover of the loop itself. As a result, potential MFS customers would lose telephone service altogether (because the CLEC number to which it had been forwarded was not yet in place). Tr. 263-64 (Ball & Wehnes). These MFS customers would "get very mad at us and sometimes they say 'We don't want your service after all.'" Id.

NYT acknowledged the problem. E.g., Tr. 284-85 (Butler) ("[w]e absolutely had some problems in the early part of the fourth quarter with cutting over interim number portability early and there's no doubt that it creates a lot of problems for the existing customer and for our CLEC"). These problems show that NYT's loop provisioning is currently commercially unreasonable, and NYT must provide actual evidence that recent problems have been overcome before it can comply with this checklist item.

**d. NYT's Provisioning Of New Loops Is Unreasonable  
Because It Does Not Provide CLECs With Timely  
Information Concerning The Demarcation Point.**

NYT has also unreasonably failed to provide CLECs with information concerning the location of the demarcation point at a customer's premises, which causes delays in the CLEC's ability to provision services. As MFS testified, NYT typically does not tell a CLEC where the demarcation point is on the day of installation. Tr. 266 (Wehnes). The information is important, however, because the CLEC may have to install riser or other inside wiring, depending on the location of the demarcation point. Id. Again, NYT acknowledged the problem. Tr. 284 (Garzillo) (the demarcation point information "[has] been a problem and that was one of the reasons why our performance was off in '96" and "[i]t is a process problem that we're working"). There can be no claim that NYT is providing nondiscriminatory access to unbundled loops so long as these problems remain.<sup>31</sup>

---

<sup>31</sup>NYT also acknowledges that the network interface device ("NID") is not available unbundled from the loop. Tr. 321 (Dowell) ("I don't believe we have sold any unbundled elements strictly as NIDs to this point").

**CHECKLIST ITEM V: UNBUNDLED LOCAL TRANSPORT**

**NYT Is Not Currently Providing Interoffice Transport To Any CLEC, and It Does Not Make Transport Facilities Available to CLECs on a Nondiscriminatory Basis.**

Interoffice transmission facilities include both the dedicated and common transport links that IXC's use to connect their POPs to the LEC's end office and the facilities CLECs use to transport traffic to LEC end offices and tandem switches. Tr. 652-54 (Garzillo); SGAT, § 5.3.1. NYT states that interoffice transmission facilities are currently available, Tr. 516 (Garzillo), but that it is not furnishing transport on an unbundled basis to any CLEC at this time. NYT admitted during the hearing that "[r]ight now we're not providing what I would consider any interoffice facilities in an unbundled environment." Tr. 522 (Garzillo); see also Tr. 656-57 (Garzillo).

In seeking to demonstrate that interoffice transmission facilities and local transport are commercially available, NYT relies on its past performance in providing interoffice facilities or local transport service pursuant to its 913 and 914 tariffs and various contractual arrangements, Tr. 517-519 (Garzillo), including for example, DS-1 and DS-3 service. As demonstrated during the hearing, however, NYT has frequently failed to provide transport and interoffice transmission facilities on a nondiscriminatory and commercially reasonable basis. For this reason, NYT cannot rely on its past record to support a claim that interoffice transmission and local transport

are commercially available, and NYT has not demonstrated that it can provide these facilities and elements on just, reasonable, and nondiscriminatory terms.

At the conference, parties provided numerous examples of NYT's failure to provide interoffice transmission facilities on a commercially reasonable basis:

- o AT&T has had longstanding problems with the provisioning and maintenance of transport facilities by NYT, and the service has declined to such an extent that AT&T was compelled to file a complaint before this Commission regarding the provisioning and maintaining of T1.5 special access circuits. Case No. 96-C-0572, filed May 22, 1996; Halloran, p. 18.<sup>32</sup> Even after the filing of the complaint, NYT's service has not improved. Id.
- o TCG was also forced to file a complaint with the FCC as a result of NYT's failure to provide termination of local transport trunks and collocation arrangements. Tr. 670 (Kouroupas).
- o NYT has failed to provide two-way trunking to TCG despite provision for such two-way trunking in the NYT/TCG interconnection agreement and TCG's repeated request for such service. Tr. 668-70 (Kouroupas).
- o Trunks ordered by MFS were not available on a timely basis despite the fact that MFS provided forecasts that projected the need for such trunks. Tr. 672-74 (Ball).
- o NYT has acted in an anticompetitive manner by failing to transfer from itself to a competing access provider approximately 90 DS-3 facilities serving AT&T. NYT unreasonably required AT&T to submit over 670 ASRs for each DS-3 facility and has transferred the facilities at a rate of only 1-2 DS-3 facilities per week. Because of NYT's delays the transfers have still not been completed after two years. Halloran, pp. 20-21.

---

<sup>32</sup>AT&T is submitting for the record copies of its initial brief and reply brief in this proceeding.



Unresolved technical issues associated with interoffice transmission facilities and local transport also undercut NYT's claim that unbundled transport is currently "available." As NYT representatives acknowledged, a number of routing issues relating to two-way trunks are still under review by NYT and CLECs. Tr. 657-658 (Garzillo). In addition, several billing issues associated with unbundled interoffice transmission facilities and local transport have yet to be resolved. For example, parties have not finally determined a number of recordkeeping issues associated with two-way trunking, and the methodology for determining usage-sensitive rates for recording and billing are still under discussion. Tr. 661-663 (Garzillo).

NYT has also not shown that it is making transport facilities available on a nondiscriminatory basis. The SGAT states that available DS-1 and DS-3 facilities used in connection with common transport will be provisioned within 15 business days, and that facilities that are not available and other unbundled interoffice transport facilities can be obtained on a negotiated basis. SGAT § 5.3.3.5. NYT has not, however, provided any information on the provisioning interval its operations experience when NYT augments its own transport capability. Therefore, neither this Commission nor the parties can determine whether NYT is favoring itself in provisioning transport facilities. Halloran, p. 21.

**CHECKLIST ITEM VI: UNBUNDLED LOCAL SWITCHING**

NYT is currently in the process of developing its unbundled local switching ("ULS") offering as an unbundled network element. The record makes clear, however, that ULS is not currently available to CLECs as an unbundled element. Indeed, NYT has only recently started discussions with a single party concerning the many steps required to obtain ULS, including NYT's undefined Network Design Request ("NDR") process. Moreover, NYT has not established written procedures governing the ordering and provisioning of ULS (other than its undefined NDR process) or demonstrated that it is "offering" ULS on just, reasonable, and nondiscriminatory terms and conditions.

The FCC has defined the unbundled local switching element as "line-side and trunk-side facilities plus the features, functions, and capabilities of the switch." First Report and Order, ¶ 412. These features, functions and capabilities include:

"the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, trunks to trunks. It also includes . . . a telephone number, directory listing, dial tone, signaling, and access to 911, operator services, and directory assistance. In addition, the local switching element includes all vertical features that the switch is capable of providing, . . . as well as any technically feasible customized routing functions." Id.

The FCC made it clear that when a requesting carrier purchases the local switching element, it obtains access to all of the above features, functions and capabilities on a per line basis. Id.

a. Unbundled Local Switching Is Not Currently Available.

NYT admits that the ULS element is not currently available from NYT. NYT testified that it is not presently furnishing unbundled local switching to any customer at this time, Tr. 230-31, 331-33 (Garzillo), and that it only began to discussions with one potential customer regarding the process of obtaining ULS in mid-March. Tr. 337 (Garzillo).

The record also shows that a number of technical problems associated with unbundled switching have not yet been resolved. For example, NYT is still trying to resolve a variety of billing issues associated with charges to be applied for the elements of the unbundled switch (e.g., port charges). Until those issues are resolved, ULS cannot be offered on a commercial basis. Tr. 359-60; Halloran, pp. 12-13.

Moreover, there is no evidence that ULS will be generally available in the near future, because NYT has yet to establish any definitive procedures for handling requests for unbundled local switching. All that exists at present is the amorphous NDR process, which NYT requires prior to providing ULS to any CLEC.<sup>33</sup>

---

<sup>33</sup>The SGAT defines the NDR process as follows:

"Prior to the ordering of any unbundled line ports, the customer must submit a Network Design Request (NDR). From the NDR and working with the TC, the Telephone Company will identify the routings of the TC's traffic from the unbundled line ports. Any requirements for customized routings will be identified. The NDR process concludes with the installation of any  
(continued...)

b. The NDR Process Offers NYT The Opportunity To Engage In Discriminatory Conduct Against CLECs.

The NDR process is ill-defined and gives NYT considerable discretion in providing ULS to a CLEC.

- o The NDR process requires a CLEC to discuss and negotiate with NYT the various options that the CLEC wants for its unbundled local switching. Tr. 232-34 (Garzillo).
- o The only written information on the NDR process is the "line class code form," which the CLEC must submit to NYT as part of the request for ULS. Tr. 362-63 (Garzillo).
- o NYT representatives stated that they believe this process could be completed within 30 business days, but the SGAT provides no time frame for completion of the process, and NYT representatives conceded that there was no definitive interval within which the ULS element could be provided. Tr. 343-44, 364 (Garzillo).<sup>34</sup>

This NDR process is a commercially unreasonable process for a function that is so basic as switch provisioning. It will provide NYT with considerable discretion and the ability to delay the introduction of competitive services by CLECs. Neither NYT nor the CLECs have any experience with the NDR process, and thus

---

<sup>33</sup>(...continued)  
customized routings and TC specific line class codes (LCCs) per end office. This line class code must be provided on all orders requesting unbundled line ports."

SGAT, § 5.6.1.1(D)(9).

<sup>34</sup>NYT testified:

"I know I hesitate to use this word but this is new to all of us. It is new to the industry. It is something that was never intended for the way that networks were built and structured and we will all get better at it, and right now it is 30 days. Tr. 343-44 (Garzillo).

there is no benchmark against which to judge NYT's performance in providing unbundled local switching. Thus, NYT is in a position to slow or delay the introduction of competitive services by CLECs. Moreover, as AT&T's witness noted, the NDR process should not be necessary for those instances in which a CLEC customer is simply migrating from NYT to a CLEC. Tr. 360-61 (Halloran).

NYT has also not established any intervals for what it denominates as "complex" orders, including, for example, Centrex orders. These are assigned to the "Large Job Committee," and all jobs assigned to the Large Job Committee have negotiated intervals. Tr. 369-71 (Butler). This provides NYT with additional opportunities to delay the competitive offerings of CLECs.

**c. NYT'S Unbundled Switch Offering Fails To Comply With The Act And The FCC's First Report And Order.**

NYT's offer of unbundled local switching also fails to satisfy the requirements of the Act and the FCC's regulations. The SGAT only "offers" to CLECs those vertical features that NYT makes available to its end users. See SGAT § 5.6.1.1; Garzillo, ¶ 31-32; Tr. 374 (Garzillo) (agreeing with AT&T witness Halloran's statements that NYT restricts its ULS offering to services that it provides to its end users). The FCC's First Report and Order, however, entitles purchasers of the ULS element to all the features and functions of the switch, even if certain of those features and functions are not being offered to NYT's

retail customers. First Report and Order, ¶ 412. NYT representatives admitted that there were certain features in its switches that NYT had not made available to its customers. Tr. 375 (Garzillo). Restricting a CLEC's ability to use the unbundled local switch is fundamentally at odds with the Act's goal of promoting competition.<sup>35</sup>

Finally, the SGAT impermissibly seeks to charge for certain vertical features and functions that are an integral part of the unbundled local switch. See SGAT § 5.6.1.7. This is in direct contradiction to the FCC's definition of the switching element. First Report and Order, ¶ 412.

**CHECKLIST ITEM VII: 911, DIRECTORY ASSISTANCE, OPERATOR CALL COMPLETION SERVICES**

NYT has not discharged its obligations under Item (vii) of the checklist, which requires NYT to provide nondiscriminatory access to (1) 911 and E911 services; (2) directory assistance services that allow other carriers' customers to obtain telephone numbers; and (3) operator call completion services.

The record shows that:

---

<sup>35</sup>NYT's failure to permit access to all the features of the switch is also one of the principal differences between resale service and use of the unbundled network element platform. A CLEC using resale is limited to the offerings that NYT provides to its customers, but a purchaser of the unbundled switch is entitled to all the features of the switch and can offer services based on those features even if NYT is not offering those same features to its end user customers.

- o NYT fails to provide emergency numbers on just, reasonable, and nondiscriminatory terms and conditions. Tr. 682-86 (Kouroupas).
- o Contrary to FCC requirements, NYT refuses to provide access to its directory assistance databases via magnetic tape or electronic format feeds. 47 C.F.R. § 51.217(c)(3)(ii); Hou, p. 54; Marzullo, p. 22.
- o NYT has refused to provide resellers with its requirements for ordering customized routing and rebranding until May 1997, making it questionable whether these services will be generally available by June 1, 1997, as the Commission has required. Hou, pp. 43-45; Tr. 603 (Halloran).
- a. **NYT Does Not Provide Nondiscriminatory Access To 911/E911 Services.**

Notwithstanding the provisions of SGAT Section 4.4.3.1. in which NYT states that it offers 911/E911 access, NYT does not provide access to 911/E911 services at rates, terms, and conditions that are just, reasonable, and nondiscriminatory. For example, NYT demanded that TCG pay \$12,000 in order to obtain the telephone numbers of the public safety answering points ("PSAPs"), which a CLEC needs to dial such numbers on a direct-dial basis if a customer notifies the CLEC operator in an emergency. Tr. 682-683 (Kouroupas); TCG Documentation, Exhibit 1, pp. 9-10. Although TCG requested the numbers from NYT more than two years ago, the matter has still not been resolved (and is the subject of a complaint by TCG pending before the Commission). In the interim, NYT provided the information for a \$3,500 fee. Tr. 684-686 (Kouroupas). NYT's refusal to provide these numbers without payment plainly constitutes a discriminatory practice.

**b. NYT Has Not Provided Nondiscriminatory Access To Directory Assistance Databases.**

NYT has not provided CLECs with nondiscriminatory access to its directory assistance databases. Although Section 5.8.1.5 of the SGAT states that NYT's Direct Access to Directory Assistance ("DADA") database "provides for access" to NYT's listings by a CLEC operator, that provision -- totally unaccompanied by details -- is too indefinite to meet the requirements of Section 252(f).

Moreover, the access to DA databases that NYT actually provides is insufficient to satisfy the requirements of the checklist. The FCC's regulations require NYT to provide CLECs with access to its DA databases via magnetic tape or electronic format feeds. 47 C.F.R. § 51.217(c)(3)(ii). Despite AT&T's and MCI's requests for such access, however, NYT has granted access to this function only in a "read-only" format. Hou, p. 54; Marzullo, ¶ 38; Garzillo, ¶ 49; Butler, ¶ 90. This practice is discriminatory, because the "read-only" format effectively prevents AT&T and MCI from developing their own DA databases and services, which NYT can do for itself. Hou, p. 55; Marzullo, ¶ 38. It also precludes the possibility of competition for DA services.



c. **NYT Does Not Provide Nondiscriminatory Access To Operator Call Completion Services.**

In addition to its failure to provide customized routing of OS/DA calls to the OS/DA platforms of purchasers of UNEs (discussed above), NYT has failed to meet, or even show that it will meet, the Commission's requirement to complete the provision of customized routing and rebranding for resellers by June 1, 1997, if (as will initially be the case) NYT uses the class of service approach.<sup>36</sup> The SGAT's provisions promising to re-route or re-brand a reseller's OS/DA calls cannot be approved, because they are simply bare promises, and their performance is seriously in question. See SGAT, §§ 6.10.3.1, 6.10.4.1.

In fact, NYT's conduct to date raises serious questions as to whether resellers will be able to place orders for customized routing and rebranding by June 1, 1997. NYT has stated that it will not advise CLECs of the ordering requirements for these services until May 1997. NYT has also indicated that it will require AT&T to specify any customized routing or rebranding needs on a customer-by-customer basis before NYT will accept an order for customized routing and rebranding; if AT&T does not meet this requirement, AT&T will continue to receive NYT-branded OS/DA.

A customer-by-customer requirement is not parity, since NYT is not required to make a customer-by-customer identification for its own branding. Such a requirement is also patently

---

<sup>36</sup>See AT&T Arbitration Order, pp. 20-21; Hou, p. 42.